Supreme Court, U. S.
FILED
OCT 1 1976
MICHAEL RODAK, JR., CLERK

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-465

CITY OF ALEXANDRIA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

CYRIL D. CALLEY
City Attorney
City of Alexandria, Virginia

J. HOWARD MIDDLETON, JR.
Deputy City Attorney
City of Alexandria, Virginia
320 King Street, Suite 200
Alexandria, Virginia 22314
(703) 750-6285

Attorneys for Petitioner

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D. C. 20001

TABLE OF CONTENTS

	Page
Preliminary Statement	1
Opinion Below	1
Statutory Provisions Involved	1
Jurisdiction of the Court	2
Question Presented	2
Statement of the Case	2
Argument	6
Conclusion	13
Certificate of Service	14

TABLE OF CITATIONS

Cases

	Page
Burford v. *Sun Oil Co.*, 319 U.S. 315 (1950)	11
City of Alexandria, Virginia v. *Old Town Yacht Basin, Inc.*, At Law No. 2449, Circuit Court for the City of Alexandria, Virginia	4, 9, 11
Colorado River Water Conservation District v. *U.S.*, —— U.S. ——, 96 S.Ct. 1236 (1976)	11
Creigh v. *Henson*, 51 Va. 231 (1853)	9
Durfee v. *Duke*, 375 U.S. 106 (1963)	9
Emerick v. *Tavener*, 9 Gratt. (50 Va.) 220 (1852)	9
Great Lakes Dredge and Dock Co. v. *Huffman*, 319 U.S. 293 (1943)	11
Hancock Oil Co. of Calif. v. *Independent Distributing Co.*, 150 P.2d 463 (1944)	10
Pribble v. *Stanley*, 74 W.Va. 75, 81 S.E. 577 (1914)	9
Reusens v. *Lawson*, 91 Va. 226, 21 S.E. 347 (1895)	9
Richardson v. *Van Dolan*, 429 F.2d 912 (9th Cir. [Alaska] 1970)	10
Southern Railway Company v. *Old Town Yacht Basin, Inc.*, At Law No. 10223, Circuit Court for the City of Alexandria, Virginia	5, 8-9
Toucey v. *New York Life Insurance Company*, 315 U.S. 118 (1941)	8
U.S. v. *Bryant, et al.* (D.C. Civil Action 2211-73)	2, 12

Statutes

28 U.S.C. § 1254(1)	2
28 U.S.C. § 2283	1, 7
Act of April 27, 1912 (37 Stat. 93)	8
Act of October 31, 1945 (59 Stat. 552)	8

IN THE

Supreme Court of the United States

OCTOBER TERM, 1976

No.

CITY OF ALEXANDRIA,
Petitioner,

v.

UNITED STATES OF AMERICA,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE JUDGMENT OF THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

PRELIMINARY STATEMENT

The City of Alexandria, a municipal corporation of Virginia, prays that a writ of certiorari issue to review a portion of the judgment of the United States Court of Appeals for the District of Columbia Circuit entered on July 6, 1976.

OPINION BELOW

The opinion of the court below is not yet reported and, therefore, appears as Appendix A.

STATUTORY PROVISION INVOLVED

28 U.S.C. § 2283

A court of the United States may not grant an injunction to stay proceedings in a state court except

as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction or to protect or effectuate its judgments. Act of Congress of June 25, 1948 (62 Stat. 968).

JURISDICTION OF THE COURT

The judgment of the court below was entered on July 6, 1976. The jurisdiction of this court is invoked under 28 U.S.C. § 1254(1).

QUESTION PRESENTED

Whether the United States District Court for the District of Columbia should rule on questions of Virginia landlord-tenant law while it ponders the ultimate resolution of the Waterfront title dispute between the United States and the City of Alexandria, Virginia?

STATEMENT OF THE CASE

This is the petition for writ of certiorari to a judgment of the United States Court of Appeals for the District of Columbia Circuit holding that the United States District Court for the District of Columbia should exercise jurisdiction over the action to quiet title to real property along the Alexandria waterfront. *United States* v. *Herbert Bryant, Inc., et al.*, No. 75-1440, in the United States Court of Appeals for the District of Columbia Circuit. The decision of the court below, rendered on July 6, 1976, reversed an order of the United States District Court for the District of Columbia, dismissing the action for lack of jurisdiction, *U.S.* v. *Bryant, et al.* (D.C. Civil Action 2211-73). A petition for writ of certiorari to this judgment is being filed by certain of the defendants in the case, including this petitioner. However, in addition to the judgment on the main issue of jurisdiction over the action to quiet title, the court below also recognized that its decision "may require the United States District Court for the District of Columbia to rule on several questions of Virginia landlord-tenant law while it ponders the ultimate resolution of this title dispute . . ." (App. A, pp. 18-19). The effect of this ruling is to place all legal disputes arising on the land subject to the action to quiet title under the jurisdiction of the federal district court. In this petition the City of Alexandria, Virginia (hereafter "City"), addresses this ruling only, the City joining with other defendants in the case below in a petition for a writ of certiorari on the main question of jurisdiction. A statement of the case as it relates to the legal dispute between the City and the Old Town Yacht Basin, Inc. (hereafter "Old Town") referred to by the court below follows.

The City is the title holder of record of certain land in the City of Alexandria, Virginia, by virtue of a deed dated 1942 and described as follows:

> Bounded on the South by the North line of Gibbon Street; on the West by the East line of Union Street; on the North by the South line of the land of Southern Railway System and extending to the bulkhead line as established on the Potomac River by the Corps of Engineers, and along said bulkhead south to the north line of Gibbon Street.

On March 29, 1956, the City entered into a lease agreement for a term of ten (10) years for the land with Alexandria Marina, Inc., which later assigned the lease to Old Town. When the lease term ended, the City as landlord and Old Town as tenant were not able to reach agreement on a new lease though negotiations continued into 1968. In June, 1968, the City raised the rent to $300.00 per month and, thereby, entered into a month-to-month lease with Old Town. In December, 1971, Old

Town refused to make further payments. On January 25, 1974, the City filed an action in the state court against Old Town to recover rent due and owing. The trial court in Virginia granted the City's motion for summary judgment, awarding $7,800.00 (less a $300.00 credit) for unpaid back rent. (*City of Alexandria, Virginia* v. *Old Town Yacht Basin, Inc.*, At Law No. 2449, Circuit Court for the City of Alexandria, Virginia.) (See Appendix B.) In that case the trial judge refused to allow Old Town to raise the issue of title to the land on the basis of a well-settled general rule of law in Virginia that the tenant may not contest the landlord's title in a landlord-tenant dispute. The Virginia Supreme Court and the United States Supreme Court denied Old Town's petition of appeal and petition for certiorari, respectively. (See Appendices C and D.) Following a petition for rehearing, which was also denied on December 1, 1975, Old Town paid the amount of the judgment to the City for rent through January, 1974. However, despite the judgment by the courts on the rent issue, Old Town refused to make further payments. In light of this fact, the City served Old Town with notice formally terminating the tenancy and demanding that it vacate the property by March 31, 1976. (See Appendix E.) At the same time notice was served demanding that Old Town pay its back rent.

Another important fact should be called to the attention of the Court. At the time the quiet title action was filed by the United States on December 21, 1973, the Southern Railway Company owned approximately half of the land on which the Old Town Yacht Basin is located, consisting of the northern portion near Wilkes Street and described as follows:

> BEGINNING at an iron pipe at the intersection of the easterly boundary of Union Street with the southerly boundary of Wilkes Street, if extended,

> and running thence South 80° 49′ 00″ East, along said southerly boundary of Wilkes Street, if extended, passing an iron pipe on line at 300.0 feet, a total distance of 482.15 feet, more or less, to the bulkhead line as shown on a 1971 plat prepared by the City of Alexandria from information furnished by the U.S. Corps of Engineers and the National Capital Park and Planning Commission; thence, leaving said southerly boundary of Wilkes Street, if extended, and go South 01° 21′ 58″ East, along said bulkhead line as shown on said plat prepared by the City of Alexandria, a distance of 179.54 feet; thence North 80° 49′ 00″ West, passing through a punch hole and cross in a concrete walk on line at 421 feet, a total distance of 516 feet, more or less, to an iron pipe, thence, North 09° 30′ 00″ East, along said easterly boundary of Union Street, a distance of 176.51 feet, more or less, to the point of beginning; containing 2.02227 acres, more or less.

Old Town rented this land from Southern Railway, but because of difficulties, Southern Railway terminated its lease with Old Town. When Old Town refused to vacate, Southern Railway filed an eviction action in the Circuit Court for the City of Alexandria, Virginia (*Southern Railway Company* v. *Old Town Yacht Basin, Inc.*, At Law No. 10223, Circuit Court for the City of Alexandria, Virginia). Southern Railway was awarded a writ of possession against Old Town on June 21, 1974. Old Town refused to obey the court order, and on June 25, 1975, was held in contempt of court. (See Appendices F and G.) Old Town still occupies that land to this day in contravention of the court's order. On March 3, 1976, a deed was recorded in Alexandria conveying that property to the City. The City, therefore, holds title to this parcel as well as the land rented to Old Town under the original lease. Since Old Town continues to occupy this land despite the writ of possession issued against it by the Virginia Court, the City on March 23, formally re-

quested Old Town to vacate this premises by April 30, 1976.

Old Town filed a motion for injunction on March 18, 1976, requesting the United States Court of Appeals for the District of Columbia Circuit to enjoin the City from taking legal action to remove Old Town as the operator of the marina. Upon consideration of Old Town's motion and the responses filed by the City and other parties, the court, without oral argument, issued an order on March 26, 1976, enjoining the City from taking action to remove its tenant, Old Town Yacht Basin, Inc., from the premises now owned by the City on the condition that Old Town pay rent of $300.00 each month to the City to be kept in a separate account. (See Appendix H.)

The July 6, 1976, order of the court below has the effect of placing the landlord-tenant dispute between Old Town and the City, described above, within the jurisdiction of the federal district court hearing the quiet title action between the United States and title holders of record along the waterfront. It is this ruling that is addressed by this petition.

ARGUMENT

I.

THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA LACKS JURISDICTION IN THE CONTROVERSY BETWEEN OLD TOWN AND THE CITY.

The City contends that the district court does not have jurisdiction over a landlord-tenant dispute between citizens of the Commonwealth of Virginia, either as a matter of original jurisdiction or in the context of the quiet title action. Indeed, if this Court upholds the de-

cision of the United States Court of Appeals in this matter, then the district court will inevitably be asked to assume jurisdiction over every legal problem with even a tangential relationship to the physical property itself, such as a tort case involving a record title holder or even a criminal matter.

II.

THE COURT BELOW ERRED BY GRANTING AN INJUNCTION TO STAY PROCEEDINGS IN A STATE COURT.

A federal court is prohibited, with specific exceptions, from enjoining a state court proceeding by 28 U.S.C. § 2283, which reads as follows:

> A court of the United States may not grant an injunction to stay proceedings in a state court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction or to protect or effectuate its judgments. Act of Congress of June 25, 1948 (62 Stat. 968).

The City believes that its suit for eviction against Old Town became a state court proceeding upon the City's notice terminating the tenancy. In addition, the City still has pending before the Circuit Court for the City of Alexandria, Virginia, an eviction suit filed in November, 1974, for nonpayment of rent.

The first exception to the prohibition set forth in 28 U.S.C. § 2283 provides that a federal court may enjoin a state proceeding if expressly authorized by Act of Congress. The City contends that in no statute can there be found express authority for a federal court to enjoin a landlord from proceeding in the state courts in a landlord-tenant dispute. Even though the court below has ruled that the United States District Court for the District of Columbia has jurisdiction over the waterfront

title cases pursuant to the Act of April 27, 1912 (37 Stat. 93) and the Act of October 31, 1945 (59 Stat. 552), these statutes speak only of adjudicating disputes as to title between the United States of America and other claimants to title. There is nothing in these statutes that could be construed as giving to this Court *in personam* jurisdiction over local parties in the Commonwealth of Virginia.

It may be contended that 28 U.S.C. § 2283 does not apply in this matter because the *res*, i.e., waterfront property, has already been taken into the jurisdiction of the district court in the quiet title case and that the court, federal or state, which first takes possession of the *res* withdraws the property from the reach of the other. *Toucey* v. *New York Life Insurance Company*, 315 U.S. 118, 135 (1941). The City agrees that the federal court hearing the waterfront title suit could take jurisdiction over tangential issues and enjoin the City from proceeding in the state courts in the landlord-tenant dispute *if the* res *were the subject of both the state proceeding and the waterfront title case.* But this is clearly not the situation. The City's causes of action in the state courts, both for rent and the eviction procedure, are not concerned with the title question but are landlord-tenant disputes arising out of a lease contract between two parties—the landlord City as record title holder and the tenant Old Town. The question of title is not an issue in the state proceedings and cannot be under substantive landlord-tenant law.

The mere fact that Old Town repeatedly raises the title issue in its legal controversies does not thereby make it a legitimate issue intertwined with the title dispute between the United States and the City. Old Town raised the title issue when Southern Railway Company filed a suit for eviction against it. The trial court refused to permit the issue to be heard. *Southern Railway Co.* v. *Old Town Yacht Basin, Inc., supra.* Old Town again raised the title question in the City's suit for rent against it. Again the trial court refused to allow Old Town to try title, *City of Alexandria* v. *Old Town Yacht Basin, Inc., supra*, and the Virginia Supreme Court and United States Supreme Court have refused to grant a writ of certiorari on this issue.

This Court has held that once a matter has been fully litigated and judicially determined, it cannot be retried in another state in litigation between the same parties. *Durfee* v. *Duke*, 375 U.S. 106 (1963). Old Town is therefore estopped from raising the issue of title in its landlord-tenant disputes with the City.

III.

AN EVICTION PROCEDURE IN THE STATE COURT DOES NOT AND CANNOT INVOLVE TITLE TO LAND ON THE ALEXANDRIA WATERFRONT.

An eviction procedure in the Commonwealth of Virginia tries the right to possession not title.

It is well settled under the law of Virginia that the possession of a tenant is the possession of the landlord, and a tenant will not be allowed to deny his landlord's title. *Reusens* v. *Lawson*, 91 Va. 226, 21 S.E. 347 (1895); *Pribble* v. *Stanley*, 74 W.Va. 75, 81 S.E. 577 (1914). In an action of unlawful detainer brought by a landlord, no proof of title is required. *Creigh* v. *Henson*, 51 Va. 231 (1853). A tenant will not be permitted to introduce evidence of title to the land embraced in the lease, either in himself or in others. *Emerick* v. *Tavener*, 9 Gratt. (50 Va.) 220 (1852). "A tenant in possession cannot defeat his landlord's title and disavow the tenancy by setting up a hostile title. No matter how destitute of title the landlord may be or how clear the title of the

stranger may be in the land, the tenant cannot deny the title of the former, nor affirm that of the latter, in his defense of the landlord's action for the land." 11 *Michie's Jurisprudence of Virginia and West Virginia*, Landlord and Tenant § 61, p. 742.

The holdings of the Supreme Court of Virginia are amply supported by case law from foreign jurisdictions. "[A]s a general rule a tenant in undisturbed possession of the demised premises is estopped to deny the title of his landlord as it existed in him at the time of the creation or the inception of the tenancy . . . without first surrendering possession to the landlord . . . . The rule rests on the ground of an equitable and not a technical estoppel and is founded on considerations of public policy and on the basic considerations of good faith and fair dealings." 51 *C.J.S.*, Landlord and Tenant § 266, pp. 694-697, § 274 and § 276(2), *et seq.*; *Richardson* v. *Van Dolah*, 429 F.2d 912 (9th Cir. [Alaska] 1970); *Hancock Oil Co. of Calif.* v. *Independent Distributing Co.*, 150 P.2d 463 (1944); 49 Am. Jur.2d, Landlord and Tenant.

To summarize, the landlord-tenant dispute between the City and its waterfront tenant does not conflict with a federal court's jurisdiction to settle the title dispute between the City and the United States, and therefore, it is not necessary in aid of its jurisdiction in the title suit for the federal court to take jurisdiction over a state matter as the landlord-tenant dispute. Indeed, the federal court hearing the title dispute should not become involved in tangential legal disputes arising out of use of the waterfront property. Until a court of final resort decides otherwise, the City as the record title holder has and should have control over the use of the property. In exercising this control, access to state court proceedings should be available to the City.

IV.

IN THE EVENT THAT THE FEDERAL DISTRICT COURT IS HELD TO HAVE JURISDICTION OVER THE LANDLORD-TENANT DISPUTE, THE COURT SHOULD ABSTAIN FROM THE EXERCISE OF JURISDICTION AS A MATTER OF SOUND JUDICIAL DISCRETION.

Should this Court decide that the federal district court hearing the waterfront title case has jurisdiction over the Virginia landlord-tenant dispute, the City contends that the district court should abstain from consideration of this ancillary problem as a matter of sound judicial discretion. *Burford* v. *Sun Oil Co.*, 319 U.S. 315 (1950) is representative of a line of cases holding that a federal court should refrain from exercising its jurisdiction in order to avoid needless conflict with the administration by a state of its own affairs. See also *Great Lakes Dredge and Dock Co.* v. *Huffman*, 319 U.S. 293 (1943).

In keeping with the policy considerations which underly *Burford*-type abstention, the court in *Colorado River Water Conservation District* v. *U.S.*, —— U.S. ——, 96 S.Ct. 1236, 1245 (1976) asserted that "the state question itself need not be determinative of state policy. It is enough that the exercise of federal review of the question . . . would be disruptive of state efforts to establish a coherent policy with respect to a matter of substantial public concern."

It has already been asserted that the principles of Virginia landlord-tenant law involved in the dispute between the City and Old Town are well-established, settled principles. In addition, the Supreme Court of Virginia upheld a trial court decision in the City's favor in *City of Alexandria* v. *Old Town Yacht Basin, Inc.*, *supra*, and this Court denied certiorari in that case. In view of the continuing legal dispute between the City and

Old Town with precedent already having been set in the state courts, it would be disruptive of state judicial efforts to enforce landlord-tenant law between local parties for the federal courts to assume jurisdiction over these matters.

Traditionally, landlord-tenant law has been a matter of purely state concern. It is clearly within the federal court's discretion to abstain from exercising jurisdiction over a local dispute, and not to do so in this case would continue to disrupt state efforts to enforce settled state law.

As discussed above in the Statement of the Case herein, a petition for a writ of certiorari is being filed by certain of the defendants in this case, *United States* v. *Herbert Bryant, Inc., et al., supra*, requesting this Court to review the ruling of the court below awarding subject matter jurisdiction over the quiet title action to the United States District Court for the District of Columbia. With respect to that petition, the City endorses and adopts as its position before this Court the petition filed by said defendants, and the argument set forth therein.

CONCLUSION

The United States District Court for the District of Columbia should not be awarded jurisdiction over local matters in Virginia, particularly those involving questions of state landlord-tenant law. Even assuming arguendo that the federal district court has jurisdiction over the Waterfront title dispute pursuant to federal statutes, it is well beyond the purview of those statutes for the court to assume jurisdiction over local disputes involving use of the Waterfront property.

For the foregoing reasons, a Writ of Certiorari should issue and the decision of the United States Court of Appeals for the District of Columbia Circuit should be reversed.

Respectfully submitted,

CYRIL D. CALLEY
City Attorney
City of Alexandria

J. HOWARD MIDDLETON, JR.
Deputy City Attorney
City of Alexandria

Office of the City Attorney
320 King Street, Suite 200
Alexandria, Virginia 22314

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Petition for a Writ of Certiorari has been served by placing a copy of the foregoing Petition in the United States mail, postage prepaid and properly addressed, this —— day of ——————, 1976, to:

Robert E. Nagle, Esquire
1730 M Street, N.W.
Washington, D.C. 20036

George H. Clark, Esquire
Suite 600
1666 K Street, N.W.
Washington, D.C. 20006

W. Curtis Sewell, Esquire
607 Prince Street
Alexandria, Virginia 22314

Leonard C. Greenbaum, Esquire
1620 I Street, N.W.
Washington, D.C. 20006

B. G. Stephenson, Esquire
2001 Jefferson Davis Hwy.
Suite 603
Arlington, Virginia 22202

John J. Adams, Esquire
1730 Pennsylvania Avenue, N.W.
Washington, D.C. 20006

Albert E. Brault, Esquire
1314 19th Street, N.W.
Washington, D.C. 20036

Wallace H. Johnson, Esquire
U.S. Department of Justice
Washington, D.C. 20530

Michael E. Kris, Esquire
Suite 1010 Bender Building
1120 Connecticut Ave., N.W.
Washington, D.C. 20036

William E. O'Neill, Jr., Esq.
1120 Connecticut Ave., N.W.
Washington, D.C. 20006

A. E. Epps, Esquire
1200 Mutual Building
Richmond, Virginia 23219

John S. Stump, Esquire
Boothe, Prichard & Dudley
711 Princess Street
P.O. Box 1101
Alexandria, Virginia 22313

Jo. V. Morgan, Jr., Esquire
Whiteford, Hart, Carmody
& Wilson
815 15th Street, N.W.
Washington, D.C. 20005

Robert L. Murphy, Esquire
307 N. Washington Street
Alexandria, Virginia 22314

Plato Cacheris, Esquire
1700 New York Avenue, N.W.
Washington, D.C. 20006

Mark Foster, Esquire
Bierbower & Rockefeller
1625 K Street, N.W.
Washington, D.C. 20006

———— ————————

J. HOWARD MIDDLETON, JR.

APPENDICES

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 75-1440

UNITED STATES OF AMERICA

v.

HERBERT BRYANT INCORPORATED, ET AL.

Appeal from the United States District Court
for the District of Columbia

(D.C. Civil Action 2211-73)

Argued 8 April 1976

Decided 6 July 1976

Kathryn A. Oberly, Attorney, Department of Justice, for appellant. *Wallace H. Johnson*, Assistant Attorney General at the time the brief was filed, *David W. Miller*, *Jacques B. Gelin* and *Lawrence E. Shearer*, Attorneys, Department of Justice, were on the brief for appellant.

Augustus C. Epps, with whom *Charles F. Midkiff*, *Robert F. Condon* and *Michael E. Kris*, were on the brief for appellee, Robinson Terminal Warehouse Corporation, argued for all appellees.

Cyril D. Calley, was on the brief for appellee City of Alexandria. *J. Howard Middleton, Jr.*, entered an appearance for appellee City of Alexandria.

Albert E. Brault was on the brief for appellee, Old Dominion Boat Club.

William E. O'Neill, Jr., was on the brief for appellees, Potomac Arms Corporation and *John C. Richards.*

W. Curtis Sewell was on the brief for appellees, Crenshaw and Norton and Company, Inc.

Jo V. Morgan, Jr., was on the brief for appellee, The Texas Company.

John J. Adams, was on the brief for appellees, Robinson Realty Corporation and Virginia Electric and Power Company.

Leonard G. Greenebaum, was on the brief for appellee, Thomas H. Andrews, Inc.

Plato Cacheris, was on the brief for appellee Norton and Company.

Robert E. Nagle, entered an appearance for appellee Old Town Yacht Basin, Inc.

George H. Clark, entered an appearance for appellee, Slater's Lane, Inc.

John J. Adams, entered an appearance for appellees Sand & Gravel Properties, Inc., and Southern Railway Company.

Mark Foster, entered an appearance for appellees Crenshaw.

Before: MCGOWAN, ROBINSON and WILKEY, *Circuit Judges*

Opinion for the Court filed by *Circuit Judge* WILKEY.

WILKEY, *Circuit Judge*: This is an appeal by the United States from a memorandum and order [1] of the United States District Court for the District of Columbia (Corcoran, J.) dismissing as to thirty of thirty-six named defendants the Government's action to quiet title to certain lands along the Alexandria, Virginia, waterfront.[2] The lands involved are submerged and artificially created fast lands which have been added to the Alexandria waterfront since 24 January 1791, the date the State of Maryland ceded to the United States the land now comprising the District of Columbia. The United States' action was brought pursuant to section 1 of the Act of 27 April 1912, ch. 96, 37 Stat. 93 (hereinafter the 1912 Act), as affirmed by section 103 of the Act of 31 October 1945, ch. 443, 59 Stat. 552 (hereinafter the 1945 Act).

Appellees, record owners or interest holders of Alexandria waterfront property, challenged the jurisdiction of the United States District Court for the District of Columbia to entertain an action to quiet title to real property located on the Virginia side of the pierhead line between the interception of the pierhead line and Second Street, Alexandria, and the interception of the pierhead line and the southeastern Maryland-District of Columbia boundary line. Appellees asserted that sections

---

[1] *United States* v. *Bryant*, 386 F. Supp. 1287 (D.D.C. 1974).

[2] "[A]ll fast and submerged lands in Virginia or the District of Columbia bounded on the south by the north line of the United States Navy pier, as such line extends shoreward, such line being 176 feet 7 inches south of the south line of Gibbon Street and on the north by the south property line of parklands of the United States, such line being approximately 500 feet north of and parallel to the street known as Slater's Lane, and as said boundaries would extend into the River, and on the west by the January 24, 1791, high water mark of the Potomac River, as such lands extend into the River. . . ." Complaint of the United States, J.A. at 28-29. Hereinafter we will refer to this area as "the Alexandria waterfront."

101 and 102 of the 1945 Act [3] settled the longstanding boundary dispute between the Commonwealth of Virginia and the District of Columbia by establishing a new boundary at the pierhead line, and that any action to quiet title to real property on the Virginia side of this new boundary must be brought in the United States District Court for the Eastern District of Virginia.

Although the United States opposed appellees' motions to dismiss on the ground that section 103 of the 1945 Act expressly preserved the District Court's jurisdiction to adjudicate actions brought by the United States to quiet title to lands along the Alexandria waterfront, the District Court concluded that as to thirty of the named defendants it was without jurisdiction and on 29 January 1975 dismissed the Government's action against those defendants.[4] We agree with the position of the

[3] Quoted *infra* at 14-15 & 15 n.25, respectively.

[4] In its memorandum opinion of 9 December 1974 the District Court explained its disagreement with the Government's position as follows:

> It is the Government's position that § 103 of the 1945 Act explicitly reserves exclusive jurisdiction in this Court over the disputed lands notwithstanding that they lie within the territorial limits of Virginia because formerly the "very lands here in controversy were within the territorial limits of this Court for quiet title actions brought by the United States," by virtue of the 1912 Act and pertinent decisions of the Supreme Court. The defendants, on the other hand, contend that the 1945 Act does no more than preserve this Court's jurisdiction over lands described in the Act of 1912, *i.e.*, land in the District of Columbia. They bolster this assertion by noting that Section 202 of the 1945 Act extends the jurisdiction of the District Court for the Eastern District of Virginia over the area within which the disputed lands lie, and that it would be unreasonable to deprive that Court of jurisdiction over such lands.
>
> The Court's view of § 103 is that it is a legislative reaffirmation of the 1912 Act, that the term "said Act" clearly refers to the 1912 Act, and that the "lands" referred to in § 103 are those lands "in the District of Columbia" as specified by the 1912 Act. This conclusion is consistent with the terms of § 202, which amended the then-Judicial Code so as to embrace within the boundaries of the District Court for the Eastern District of Virginia the land ceded to Virginia by §§ 101 and 102 of the 1945 Act.

386 F. Supp. at 1291-92 (footnote omitted). Accordingly, the District Court dismissed those defendants claiming ownership or an interest in land on the Virginia side of the pierhead line running between Gibbon Street on the south and Second Street on the north. Based on a dispute as to whether certain parcels of land between Third Street and Slater's Lane are in Virginia or the District of Columbia, the District Court retained jurisdiction over six defendants. The court's order, entered 29 January 1975, included a certification pursuant to FED. R. CIV. P. 54(b) so as to permit immediate appellate review.

The reasons we reach a different conclusion from that of the District Court are found in sections II and III of this opinion *infra*.

United States, and therefore reverse the decision of the District Court.

I. HISTORICAL AND STATUTORY BACKGROUND

This dispute, both in its present jurisdictional posture and in its substantive aspects relating to title, arises out of a one-hundred-and-thirty-year-old boundary dispute between the Commonwealth of Virginia and the District of Columbia. The dispute began in 1846 when Congress retroceded to Virginia the land it had ceded to the United States for the creation of a federal city.[5]

[5] The pertinent provisions of "An Act to retrocede the County of Alexandria, in the District of Columbia, to the State [*sic*] of Virginia" provide as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,* That, with the assent of the people of the county and town of Alexandria, to be ascertained as hereinafter prescribed, all of that portion of the District of Columbia ceded to the United States by the State [*sic*] of Virginia, and all the rights and jurisdiction therewith ceded aver the same, be, and the same are hereby, ceded and forever relinquished to the State of Virginia, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon.

[Footnote continued on page 6a]

The United States takes the position, with which we agree, that, since this retrocession included only those lands which Virginia had originally ceded in 1791, the boundary in 1846 between the District of Columbia and Virginia became the high-water mark on the Virginia side of the Potomac River as of 24 January 1791. Any land, either submerged or fast, on the District of Columbia side of the 1791 high-water mark remained in the District of Columbia since it was part of the 24 January 1791 Maryland cession to the United States.

In order to clarify and protect federal interests along the Alexandria waterfront, Congress in 1912 enacted the following statute:

> . . . That for the purpose of establishing and making clear the title of the United States it shall be the duty of the Attorney General of the United States to institute as soon as may be, or whenever in his judgment it is deemed proper, a suit or suits in the Supreme Court of the District of Columbia [now the United States District Court for the District of Columbia] against all persons and corporations, or others, who may have, or pretend to have, any right, title, claim, or interest adverse to the complete title of the United States in and to any part or parcel of the land or water *in the District of Columbia* in, under, and adjacent to the Potomac River, the Anacostia River or Eastern Branch, and Rock Creek, including the shores and submerged or partly submerged land, as well as the beds of said waterways, and also the upland immediately adja-

[5] [Continued]

> SEC. 2. *And be it further enacted*, That nothing herein contained shall be construed to vest in the State [*sic*] of Virginia any right of property . . . in the soil of the territory hereby receded, so as to affect the rights of individuals or corporations therein . . . .

Act of 9 July 1846, ch. 35, §§ 1 & 2, 9 Stat. 35.

> cent thereto, including made lands, flats, and marsh lands.[6]

However, no general action to adjudicate title to lands lying along the Alexandria waterfront was initiated until 21 December 1973 when the United States filed the suit now before this court.

Since 1912 the Alexandria waterfront has been extended (artificially and perhaps naturally) into the Potomac River at several places, and jurisdictional uncertainties increasingly have plagued law enforcement activities in the area. To alleviate this problem, Congress passed the 1945 Act to "establish a definite clear-cut boundary line, easy to recognize and convenient *for police and court jurisdiction*. . . ."[7] By ceding *concurrent jurisdiction* to the Commonwealth of Virginia over all lands located between the pierhead line and the mean high-water mark of 1791, this statute established the pierhead line as the new jurisdictional boundary between Virginia and the District of Columbia, at least for *law enforcement (i.e., police and court) purposes.*

[6] Act of 27 April 1912, ch. 96, § 1, 37 Stat. 93. Appellees and the District Court place a great deal of reliance on the five words "in the District of Columbia" italicized above. We explain why this reliance is misplaced *infra* at 8-16.

The District Court also suggests that "the [1912] Act was designed primarily to meet the problems of the Anacostia River reclamation . . .," *i.e.*, not to meet the problems of the Alexandria waterfront. 386 F. Supp. at 1290 (footnote omitted). While the Anacostia River reclamation project may well have been the motivating force behind the 1912 Act, the same House report cited as authority by the District Court states that "[t]he bill also provides for the settlement of any *future* questions along the river frontage of the District where the United States has a claim of rights." H.R. Doc. No. 513, 62d Cong., 2d Sess. 1 (1913) (emphasis added).

[7] H.R. Doc. No. 595, 79th Cong., 1st Sess. 1 (1945) (emphasis added); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945) (emphasis added).

Section 103 of the 1945 Act, however, specifically preserved the exclusive jurisdiction of the United States District Court for the District of Columbia to determine the title to lands lying along the Alexandria waterfront:

> SEC. 103. Nothing in this Act shall be construed as relinquishing any right, title, or interest of the United States to the lands lying between the mean high-water mark as it existed January 24, 1791, and the boundary line as described in section 101; *or to limit the right of the United States to establish its title to any of said lands as provided by Act of Congress of April 27, 1912* (37 Stat. 93); *or the jurisdiction of the courts of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes, and lowlands of the Potomac River, and other lands as described by said Act below the mean high-water mark of January 24, 1791* . . . .[8]

II. JURISDICTION TO ADJUDICATE THE UNITED STATES' ACTION TO QUIET TITLE

The jurisdictional issue in this case turns entirely upon an interpretation of four interrelated statutory provisions: section 1 of the 1912 Act and sections 101, 102, and 103 of the 1945 Act.

In section 1 of the 1912 Act, Congress directed the Attorney General of the United States to institute suits in the Supreme Court of the District of Columbia (the predecessor of the United States District Court for the District of Columbia) to establish and make clear the title of the United States to submerged and fast lands along the Potomac River within the boundaries of the

[8] Act of 31 Oct. 1945, ch. 443, § 103, 59 Stat. 552 (set out as a note under D.C. CODE ANN. § 1-101 (1973)).

District of Columbia *as it then existed.*[9] These four italicized words are critical to the outcome of this case. In view of the District Court's and appellees' heavy reliance on the fact that section 1 of the 1912 Act only directs the Attorney General to bring suits in the United States District Court for the District of Columbia against entities who may have an interest adverse to the United States' interest in lands "in the District of Columbia,"[10] the pivotal question becomes: what lands (fast or submerged) were "in the District of Columbia" *in 1912 when Congress used this language?*

After the 1931 Supreme Court decision in *Smoot Sand & Gravel Corp.* v. *Washington Airport, Inc.*,[11] it is indisputable that *in 1912* the jurisdictional boundary (for all purposes) between Virginia and the District of Columbia was the high-water mark of the Potomac River on the Virginia side as of 24 January 1791, *not* the pierhead line later established *in 1945* for law enforcement and perhaps other purposes. In *Smoot*, speaking through Justice Holmes, the Court explained:

[9] Section 1 is quoted, in relevant part, *supra* at 6-7. Additionally, we note that section 4 of the 1912 Act provides as follows:

> SEC. 4. That if on the final hearing of said cause the said Supreme Court of the District of Columbia [*i.e.*, the United States District Court for the District of Columbia] shall be of opinion that there exists any right, title, or interest in the land or water in this Act mentioned in any person, or corporation, or others, adverse to the complete and paramount right of the United States, the said court shall forthwith and in a summary way proceed to ascertain the value of any such right, title, interest, or claim, exclusive of the value of any improvement to the property covered by such right, title, or interest made by or under the authority of the United States, and report thereof shall be made to the Congress.

Act of 27 April 1912, ch. 96, § 4, 37 Stat. 93.

[10] Act of 27 April 1912, ch. 96, § 1, 37 Stat. 93. *See* note 4 *supra*.

[11] 283 U.S. 348 (1931).

> The Circuit Court of Appeals states that the sole question presented is whether the boundary line between Virginia and the District of Columbia is at high or at low water mark on the Virginia side of the Potomac, and that is the only question argued here. In view of the previous decisions and intimations of this Court it does not need extended discussion now.
>
> It must be assumed, notwithstanding some suggestion of ancient controversies, that the title of Maryland was that conveyed to Lord Baltimore by the charter of Charles I. and ran to and along the farther bank of the Potomac River. *Marine Railway & Coal Co.* v. *United States*, 257 U.S. 47, 63. This means that the boundary was the usual high water mark, *Oklahoma* v. *Texas*, 260 U.S. 606, 626, *et seq.*; so that the only question is whether anything has happened since to change the original line.[12]

Appellees attempt to discredit the authority of *Smoot* on three grounds. First, they complain that "[n]o one, including the United States, knows the whereabouts of the high water mark of the Potomac River as it existed in 1791." Second, they assert that the Government wants the boundary line between the District of Columbia and Virginia "categorically limited . . . to the original 1791 high water mark . . ." notwithstanding the *Smoot* Court's reference to *Oklahoma* v. *Texas* where the Court had previously recognized the effect of such natural boundary-changing forces as accretion and erosion. Third, appellees contend that the Government's (and this court's) reading of *Smoot* "is in direct conflict with section two of the Act of Retrocession" of 9 July 1846.[13]

As to appellees' first objection, we accept the Government's response that while it may not be able to locate

[12] *Id.* at 350.

[13] Appellee's Brief at 23 & 25.

indisputably the 1791 high-water mark at this time, it could "after discovery and adequate test or core drilling, establish which portions of the disputed area were artificially filled after 1791." [14] Thus, the fact that no one at this moment can precisely locate the 1791 line does not diminish—especially from a jurisdictional perspective—the importance of the *Smoot* Court's approval of that line, nor mean—from the standpoint of the merits—that the Government will not be able to prove title to any of the property at issue in this case.

As to appellees' second objection, we again agree with the Government's response: "The exact location of the 1791 high water line is, essentially irrelevant *in a jurisdictional sense*, since Congress directed that these issues be determined in the United States District Court for the District of Columbia." [15] In other words, at least *insofar as jurisdiction is concerned*, Congress saw fit in the Acts of 1912 and 1945 to overrule legislatively the common law doctrines of accretion and erosion.

So long as there is a genuine dispute over title (*i.e.*, a dispute over present title or the location of present-day boundaries) the District Court for the District of Columbia has, by virtue of the 1912 Act, exclusive subject matter jurisdiction over Government-initiated quiet title actions involving Alexandria waterfront property. Perhaps the District Court will decide that, through sections 101 and 102 of the 1945 Act, Congress intended to relinquish *all* title claims (not just law enforcement jurisdiction) to the Alexandria waterfront property, but in section 103 decided, in case a dispute arose, to preserve in the District of Columbia federal courts the exclusive subject matter jurisdiction established by the 1912 Act.[16]

[14] Government Reply Brief at 2 n.2.

[15] *Id.* (emphasis added).

[16] *But see* Act of 31 Oct. 1945, ch. 443, § 103 (first clause), 59 Stat. 552 *and* the legislative history quoted in the text at note 22 *infra*.

Nevertheless, even this determination on the merits would *not* deprive the court of subject matter jurisdiction over this title dispute.

Finally, we do not understand how appellees find the Government's and this court's interpretation of *Smoot* to be "in direct conflict with section 2 of the Act of Retrocession . . ." of 9 July 1846.[17] In the first place, since this Act only retroceded lands on the Virginia side of the 1791 high-water line (the land Virginia originally ceded), it does not affect the Alexandria waterfront property now in dispute.[18] Moreover, section 2 talks only in terms of not vesting "*in the State of Virginia* any right of property";[19] it does not speak of the rights (or lack thereof) of the United States.

Again borrowing the words of Justice Holmes, we conclude that ". . . the only question is whether anything has happened since [1912] to change the original [1791] line."[20] Appellees, with whom the District Court agreed, suggest that the 1945 Act somehow shrunk the 1912 quiet title jurisdiction of the District Court down to those

---

[17] Appellees' Brief at 23. Section 2 of this Act is quoted, in relevant part, at note 5 *supra*.

[18] Appellees in moving to dismiss for lack of jurisdiction and the District Court in granting appellees' motions as to thirty of the named defendants appear to have accepted the Government's assertion that "the land area giving rise to this action is located . . . riverward of the highwater mark of the Potomac River on the Virginia side as of January 24, 1791 . . . ." Government Brief at 12-13. In any event, if appellees do not agree with this assertion, on remand the District Court will have to decide this threshold jurisdictional issue, and appellees will have ample opportunity to make their position known. If, on remand, the District Court finds that the land here at issue is situated *on the Virginia side* of the 1791 high-water line, then, of course, the 1912 Act would *not* confer jurisdiction upon the court, and the case would have to be dismissed.

[19] Act of 9 July 1846, ch. 35, § 2, 9 Stat. 35 (emphasis added).

[20] *Smoot Sand & Gravel Corp.* v. *Washington Airport, Inc.*, 283 U.S. at 350.

lands which are *both* in the District of Columbia (according to the *new* boundary established by section 101 of the 1945 Act) *and* east of the 1791 high-water mark. Of course, *in 1912* these two requirements—being in the District of Columbia and being east of the 1791 high-water mark—were one and the same requirement; after 1945, however, the former no longer included all of the latter. We turn now to the relevant provisions of the 1945 Act.

The Act of 31 October 1945 was passed by Congress, at the urging of the Attorney General, for the express purpose of "establish[ing] a definite clear-cut boundary line, easy to recognize and convenient *for police and court jurisdiction*, between the District of Columbia and the Commonwealth of Virginia."[21] Both the Senate and the House reports on the 1945 Act explain,

> . . . The bill in no way affects property rights and claims as they now exist in this area. It establishes definitely the Federal courts in which all *criminal* offenses will be tried [*i.e.*, the District Court for the Eastern District of Virginia].[22]

---

[21] H.R. Doc. No. 595, 79th Cong., 1st Sess. 1 (1945) (emphasis added); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945) (emphasis added). The Attorney General informed Congress,

> [A]t present the enforcement of the criminal law is hampered, and at times even frustrated, by reason of the uncertainty as to what courts have jurisdiction over *criminal* offenses committed within the disputed area.

H.R. Doc. No. 595, 79th Cong., 1st Sess. 2 (1945) (emphasis added); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945) (emphasis added).

[22] H.R. Doc. No. 595, 79th Cong., 1st Sess. 2 (1945) (emphasis added); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945) (emphasis added). *Accord*, H.R. Doc. No. 513, 62d Cong., 2d Sess. 2 (1912) re the 1912 Act:

> The bill has no other effect than to provide a means to quiet title. . . . The matter of future disposition of the land is not affected and the question of the acquirement of private rights which may de [*sic*] determined to exist, as well as the disposition of the land confirmed in the United States, is left to the future action of the Congress.

Section 101 of the 1945 Act established the *new* boundary between the District of Columbia and Virginia for law enforcement (and perhaps other)[23] purposes as follows:

> Said boundary line shall begin at a point where the northwest boundary of the District of Columbia intercepts the high-water mark on the Virginia shore of the Potomac River and following the present mean high-water mark; thence in a southeasterly direction along the Virginia shore of Little River to Boundary Channel, along the Virginia side of Boundary Channel to the main body of the Potomac River, along the Virginia side of the Potomac River across the mouths of all tributaries affected by the tides of the river to Second Street, Alexandria, Virginia, from Second Street to the present established pierhead line, and following said pierhead line to its connection with the District of Columbia-Maryland boundary line; that whenever said mean high-water mark on the Virginia shore is altered by artificial fills and excavations made by the United States, or by alluvion or erosion, then the boundary shall follow the new mean high-water mark on the Virginia shore as altered, or whenever the location of the pierhead line along the Alexandria water front is altered, then the boundary shall follow the new location of the pierhead line.[24]

Although section 102 of the[25] Act cedes to Virginia sovereignty and *concurrent jurisdiction* with the United States over the area between the 1791 high-water mark and section 101's newly established pierhead line,[23] *sec-*

[23] *But see* the language from both the House and the Senate reports on the 1945 Act quoted in the text accompanying note 22 *supra*.

[24] Act of 31 Oct. 1945, ch. 443, § 101, 59 Stat. 552.

[25] Section 102 provides:

> All that part of the territory situated on the Virginia side of the Potomac River lying between the boundary line as described in section 101 and the mean high-water mark as it existed January 24, 1791, is hereby ceded to and declared to be henceforth within the territorial boundaries, jurisdiction, and sovereignty of the State [*sic*] of Virginia: *Provided, however,* That concurrent jurisdiction over the said area is hereby reserved to the United States.

tion 103 expressly states that the Act is to have no effect on (1) "any right, title, or interest of the United States" in these lands, (2) "the right of the United States to establish its title to any of [these] lands as provided by [the 1912 Act]," or (3) "the jurisdiction of the courts of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes, and lowlands of the Potomac River, and other lands as described by said Act [the 1912 Act] below the mean high-water mark of January 24, 1791 . . . ."[26]

According to the Supreme Court's decision in *Smoot*, the "lands as described by said Act [the 1912 Act]"[27] and "in the District of Columbia"[28] before passage of the 1945 Act, were those lands along the Alexandria waterfront below the mean high-water mark of 24 January 1791. Clearly, the House and Senate saw it this way when they passed the 1945 Act. In their respective reports, both Houses of the Congress recognized,

> . . . The United States Supreme Court has set the boundary line between the District of Columbia and the Commonwealth of Virginia at the high-water mark of the Potomac on the Virginia shore as it existed when the District of Columbia was created in 1791. (*Washington Airport* v. *Smoot Sand and Gravel Corporation*, 283 U.S. 348, decided May 4, 1931.)[29]

Id. § 102.

[26] *Id.* § 103.

[27] *Id.*

[28] Act of 27 April 1912, ch. 96, § 1, 37 Stat. 93.

[29] H.R. Doc. No. 595, 79th Cong., 1st Sess. 1 (1945); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945).

III. Conclusion

The District Court's determination that it does not possess subject matter jurisdiction over this quiet title action flies directly in the face of section 103's clear and specific preservation of "the jurisdiction of the courts of the United States for the District of Columbia." [30] Appellees' and the District Court's interpretation of the 1912 and 1945 Acts ignores the unambiguously stated intent of the 1945 Congress to "in no way affect[] property rights and claims as they [then] exist[ed] in [the Alexandria waterfront] area" [31] and renders section 103 of the 1945 Act absolutely meaningless. Since we can discern no reason for the inclusion of section 103, if Congress intended to establish pursuant to sections 101 and 102 a jurisdictional boundary between the District of Columbia and Virginia *for all purposes*, we reject the construction of the 1912 and 1945 Acts adopted by the District Court.[32]

---

[30] Act of 31 Oct. 1945, ch. 443, § 103, 59 Stat. 552.

[31] H.R. Doc. No. 595, 79th Cong., 1st Sess. 2 (1945); S. Doc. No. 598, 79th Cong., 1st Sess. 2 (1945).

[32] *See, e.g., United States* v. *Menasche*, 348 U.S. 528, 538-39 (1955); *City of New York* v. *Train*, 494 F.2d 1033, 1049-50 (D.C. Cir. 1974), *aff'd*, 420 U.S. 35 (1975); *Wilderness Soc'y* v. *Morton*, 479 F.2d 842, 855-56 (D.C. Cir.), *cert. denied*, 411 U.S. 917 (1973).

We perplexingly note that the judge, who in the instant case granted appellees' motion to dismiss, apparently agreed, in an earlier unreported memorandum opinion, with the construction of section 103 now advocated by the United States and adopted by this court. In *United States* v. *Robinson Terminal Warehouse, Inc.*, Civil No. 1903-73 (D.D.C. 1973), he wrote,

> The Court's jurisdiction is based upon 28 U.S.C. § 1345 (1970) (United States as plaintiffs); the Act of April 27, 1912, ch. 96, 37 Stat. 93; and the Act of October 31, 1945, ch. 443, 59 Stat. 552 (set out as a note under D.C. CODE ANN. § 1-101 (1973)).
>
> The cited Act of October 31, 1945, was designed to quiet forever the dispute over the boundary between the District of

> Columbia and the Commonwealth of Virginia. Section 101 of that Act describes the boundary line . . .; Section 102 cedes to Virginia the land lying on the Virginia side of the line so fixed; and Section 103 reserves certain rights to the United States. It is this last section which is important to the discussion of jurisdiction.
>
> Section 103 expressly confers jurisdiction upon "the courts of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes, and low-lands of the Potomac River, and other lands as described by said Act below the mean high-water mark of January 24, 1791 . . . ." The phrase "said Act" refers to the Act of April 27, 1912, ch. 96, § 1, 37 Stat. 93 . . . .
>
> [Defendant] Robinson argues that the 1912 Act limits this Court's jurisdiction solely to cases concerning land "in the District of Columbia." Thus since the property in question here lies within the boundaries of the Commonwealth of Virginia, this Court lacks jurisdiction, and the action lies only in the United States District Court for the Eastern District of Virginia.
>
> Assuming, *arguendo*, that the disputed property does lie within Virginia's boundaries, the Robinson argument ignores the plain statutory language of Section 103, which clearly grants jurisdiction to this Court to hear quiet title cases concerning the Potomac River generally *and* reaffirms this Court's jurisdiction to hear quiet title cases concerning the Potomac River generally *and* reaffirms this Court's jurisdiction to hear quiet title actions concerning "land or water in the District of Columbia in, under, and adjacent to the Potomac River . . . ." *See* Act of October 31, 1945, ch. 443, § 103, 59 Stat. 552.
>
> It appears to this Court that what Congress attempted to do in the 1945 Boundary Act was to establish once and for all a clear and definite boundary between the District of Columbia and Virginia, based on all the relevant data available to it at that time. Section 103, clause 3, of that Act . . . was clearly intended by Congress to vest in the District Court for the District of Columbia original and exclusive jurisdiction to hear and decide quiet title cases which were sure to follow in the wake of the new legislation. The remainder of the language in Section 103, clause 3, that following the comma after "River", *i.e.*, "and other lands as described by said Act (the 1912 Act) below the mean high-water mark of January 24, 1791 . . .", obviously reaffirms this Court's grant of jurisdiction contained in the Act of April 27, 1912, to wit, to hear and decide those quiet title cases concerning the Potomac River *and* land located in the District of Columbia. Thus, all the cases concerning

Recognizing that our decision may require the United States District Court for the District of Columbia to rule on several questions of Virginia landlord-tenant law while it ponders the ultimate resolution of this title dispute,[33] we, nevertheless, cannot ignore the express intent of Congress that this dispute be resolved in the United States courts for the District of Columbia. Although

---

Potomac River disputes are cognizable in this Court. Any other construction of clause 3 in Section 103 would violate that principle of statutory construction which dictates that all words in a statute are to be assigned meaning and that nothing therein is to be construed as duplicative or surplusage. *G. Sutherland*, 2 *Statutory Construction* § 4705 (3d ed. 1943).

This Court accordingly assumes jurisdiction of the suit.

Government Brief, Appendix B, at 30-32. We find it difficult to reconcile what we feel was a correct statement of the law in *Robinson Terminal* with the following excerpt from the same District Judge's later opinion in the instant case:

> The Government would seek to rebut what to this Court are the plain terms of the 1945 Act by saying that if Congress intended that an action such as this one was to be litigated in Virginia, Congress would not have needed or used the language it employed in § 103. But that position violates the well-known principle of statutory construction that all words in a statute are to be assigned a meaning and not to be considered mere surplusage. *See* 2 G. Sutherland, Statutory Construction § 4705 (3d ed. 1943).

386 F. Supp. at 1292.

[33] *E.g.*, the rent dispute between the City of Alexandria and Old Town Yacht Basin, Inc., both appellees in the instant proceeding, wherein we entered an order on 26 March 1976 enjoining the City of Alexandria

> from taking any action to remove appellee, Old Town Yacht Basin, Inc., from the premises which it now occupies until further order of the Court on condition that appellee Old Town Yacht Basin, Inc., shall pay rent of $300.00 each month, when and as the same becomes due, to the City of Alexandria with the requirement that such funds be kept separate from other city funds until further order of this Court.

Consistent with our disposition of the instant case, we will vacate this order upon issuance of the mandate to the District Court. At that time the matter will be in the hands of the District Court.

the federal district courts for the Eastern District of Virginia would probably have more expertise in handling these ancillary matters involving Virginia law, federal tribunals are not free to pick and choose among the various functions assigned to them by Congress.

In contrast to this recognized problem, we also note that the goals of judicial economy would not be furthered by splitting this dispute into two separate actions, as the District Court chose to do. Clearly, it is not an efficient utilization of scarce judicial resources to split a dispute involving the same or similar evidence and legal principles into two separate actions, which may eventually require the attention of two federal district courts, two United States courts of appeals, and then, possibly, the Supreme Court.

For these reasons we conclude that the District Court's dismissal of this action for lack of jurisdiction was based on an erroneous construction of the governing jurisdictional statutes. Accordingly, for a trial on the merits in the District Court this case is

Reversed and Remanded.

APPENDIX B

VIRGINIA:

IN THE CIRCUIT COURT OF THE
CITY OF ALEXANDRIA

At Law No. 2449

CITY OF ALEXANDRIA,
a municipal corporation of Virginia,
Plaintiff,

v.

OLD TOWN YACHT BASIN, INC.,
Defendant.

ORDER

THIS CAUSE came on to be heard on the 21st day of June 1974, upon the Motion for Judgment for Rent with Exhibits filed by plaintiff herein, upon the Grounds of Defense, Amended Grounds of Defense and Counterclaim filed by the defendant herein, upon the Answer to Counterclaim filed by plaintiff, upon a Request for Admission of Facts and Genuinesess of Documents by plaintiff, upon the defendant's Response to said Request, upon a Request for Admission of Facts and Genuineness of Documents by defendant, upon the plaintiff's oral response in open Court to said Request, upon the Motion for Summary Judgment by plaintiff, upon the stipulations by plaintiff and defendant, and was argued by counsel.

AND IT APPEARING TO THE COURT that the lease dated March 29, 1956, and recorded in Deed Book 430 at page 27 among the land records of the City of Alexandria, Virginia, entered into by the defendant's

predecessors and the plaintiff, and assigned to the defendant with consent to the assignment by the plaintiff, expired on March 29, 1966; that negotiations toward a new rental agreement continued between plaintiff and defendant through June 1968; and that payments of rent in the amount of ONE DOLLAR ($1.00) per year were made thereafter on April 1, 1966, April 1, 1967, and May 13, 1968, and that such payments did not create an extension or renewal of the lease on a year to year basis;

AND IT FURTHER APPEARING TO THE COURT that on July 1, 1968, the plaintiff and defendant agreed to a tenancy from month to month at a rental in the sum of THREE HUNDRED DOLLARS ($300.00) per month by virtue of a letter dated June 17, 1968, marked plaintiff's Exhibit B and defendant's payment of the rent demanded commencing on July 1, 1968, and continuing through November 1971, all rent being current through November 1971; and that rent is due and owing the City for defendant's use and occupancy of the City owned land for December 1971 through January, 1974, in the sum total of SEVEN THOUSAND EIGHT HUNDRED DOLLARS ($7,800.00);

AND IT FURTHER APPEARING TO THE COURT that the defendant Tenant is estopped to deny the plaintiff Landlord's title unless he claims title in himself, which the defendant has not done;

AND IT FURTHER APPEARING TO THE COURT that there is no question of fact to be determined by the jury; therefore, it is hereby

ADJUDGED, ORDERED and DECREED that the plaintiff's Motion for Summary Judgment for Rent in the sum total of SEVEN THOUSAND EIGHT HUN-

DRED DOLLARS ($7,800.00) is granted and the defendant's Counterclaim is dismissed. The Court hereby notes that plaintiff and defendant agrees that the sum of $300 is to be credited to the defendant's account.

AND IT IS SO ORDERED this 10th day of July 1974.

/s/ Donald H. Kent
Judge
JLD 23, page 93

SEEN:

/s/ J. Howard Middleton, Jr.
Assistant City Attorney
Counsel for Plaintiff

SEEN AND EXCEPTION HEREBY NOTED:

LUTZ & KAVALJIAN

/s/ Herman W. Lutz
HERMAN W. LUTZ
Counsel for Defendant

APPENDIX C

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Friday the 10th day of January, 1975.

The petition of Old Town Yacht Basin, Inc., for a writ of error and supersedeas to judgments rendered by the Circuit Court of the City of Alexandria on the 10th day of July, 1974, and the 11th day of September, 1974, respectively, in a certain motion for judgment then therein depending, wherein the City of Alexandria, etc., was plaintiff and the petitioner was defendant, having been maturely considered and a transcript of the record of the judgments aforesaid seen and inspected, the court being of opinion that there is no reversible error in the judgments complained of, doth reject said petition, and refuse said writ of error and supersedeas, the effect of which is to affirm the judgments of the said circuit court.

A Copy,
Teste:

HOWARD G. TURNER
Clerk

By: /s/ Allen L. Lucy
Deputy Clerk

APPENDIX D

VIRGINIA:

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Monday the 20th day of October, 1975.

Record No. 741082

OLD TOWN YACHT BASIN, INC.,
Plaintiff in error,

against

CITY OF ALEXANDRIA,
Defendant in error.

An order of the Supreme Court of the United States was received on this day by the clerk and is recorded as follows:

SUPREME COURT OF THE UNITED STATES

No. 74-1548

OLD TOWN YACHT BASIN, INC.,
Petitioner,

v.

CITY OF ALEXANDRIA

ON PETITION FOR WRIT OF CERTIORARI to the Supreme Court of the Commonwealth of Virginia.

ON CONSIDERATION of the petition for a writ of certiorari herein to the Supreme Court of the Commonwealth of Virginia,

IT IS ORDERED by this Court that the said petition be, and the same is hereby denied.

October 6, 1975

A true copy

Test: MICHAEL RODAK, JR.
Clerk of the Supreme Court of
the United States

By /s/ Francis J. Corson
Deputy
A Copy,
Teste:

/s/ [Illegible]
Clerk

APPENDIX E

OLD TOWN YACHT BASIN, INC
James G. Lang, Registered Agent
500 South Union Street

Kathryn B. Lang, Secretary-Treasurer
215 North Pitt Street
Alexandria, Virginia 22314

TAKE NOTICE, that Old Town Yacht Basin, Inc. is under a month-to-month lease from the City of Alexandria, a municipal corporation of Virginia, for certain land owned by and in the City of Alexandria, Virginia, on the Potomac River north of Gibbon Street. The land is more particularly described as follows:

> Bounded on the South by the North line of Gibbon Street; on the West by the East line of Union Street; on the North by the South line of the land of Southern Railway System and extending to the bulkhead line as established on the Potomac River by the Corps of Engineers, and along said bulkhead south to north line of Gibbon Street.

The City of Alexandria, Virginia, hereby terminates said month-to-month lease and hereby gives the Old Town Yacht Basin, Inc. thirty days' notice to vacate the aforesaid premises no later than March 31, 1976.

CITY OF ALEXANDRIA, a municipal corporation of Virginia

By /s/ Douglas Harman
DOUGLAS HARMAN
City Manager

Subscribed and sworn to before me this 26th day of February, 1976.

My commission expires July 13, 1979.

/s/ Susan K. Seagroves
Notary Public

APPENDIX F

Law No. 10223

SOUTHERN RAILWAY COMPANY,
Plaintiff,

v.

OLD TOWN YACHT BASIN, INC.
500 South Union Street, Alexandria, Virginia,
Defendant.

WRIT OF POSSESSION

COMMONWEALTH OF VIRGINIA
CITY OF ALEXANDRIA, to-wit:

TO THE SHERIFF OF THE CITY OF ALEXANDRIA—GREETING

You are hereby commanded to cause the plaintiff Southern Railway Company to have lawful possession of the premises located at 500 South Union Street in Alexandria, Virginia, and more particularly described in plaintiff's Exhibit 1 filed herein, for which judgment was granted on the 26th day of January, 1973 in this Court against the defendant Old Town Yacht Basin, Inc.; and make return of this Writ to this Court within 60 days of this date and have then and there this Writ.

Enter this 21st day of June, 1974.

/s/ Franklin P. Backus
Judge

Entered June 21, 1974
Common Law Bk 13, page 816

I ask for this:

BOOTHE, PRICHARD & DUDLEY
4085 University Drive
Fairfax, Virginia 22030
Writ to Shift 6/24/74

By /s/ Thomas C. Brown, Jr.
THOMAS C. BROWN, JR.
Counsel for Southern Railway Company

Copy Teste:

ALVIN W. FRINKS
Clerk

By: /s/ Kathryn L. Stewart
Deputy Clerk

APPENDIX G

IN THE CIRCUIT COURT OF THE
CITY OF ALEXANDRIA

Law No. 10223

SOUTHERN RAILWAY COMPANY,
Plaintiff,

vs.

OLD TOWN YACHT BASIN, INC.,
Defendant.

ORDER

This cause came on for a hearing on the 12th day of February 1975 on a Rule to Show Cause requiring the defendant, Old Town Yacht Basin, Inc., to appear before the Court and show cause why it should not be found in contempt for disobeying the lawful judgment order and process of this Court.

It appearing to the Court, upon consideration of the testimony of witnesses and the memoranda and argument of counsel for the parties, that the right to possession in this unlawful detainer action has been adjudicated by the Court in its Judgment Order entered on January 26, 1973; that in the absence of an adjudication that the defendant's right to possession is superior to that of the plaintiff, the defendant must abide by the Court's Judgment Order; and that the defendant re-took possession of the property which is the subject of this Court's Judgment Order on the permission of a third party whose right has not been adjudicated to be superior to that of the plaintiff, it is hereby

ADJUDGED, ORDERED AND DECREED that the defendant, Old Town Yacht Basin, Inc. is hereby found to

be in contempt of the lawful judgment order and process of this Court.

It is further ADJUDGED, ORDERED AND DECREED that the defendant, Old Town Yacht Basin, Inc. is hereby fined in the sum of $1500.00, and it further appearing that defendant has again vacated the property said fine is hereby suspended for a period of five years, or until further order, on condition that the judgment order of January 26, 1973 shall be obeyed continuously.

ENTERED this 25th day of June, 1975.

/s/ Franklin P. Backus
FRANKLIN P. BACKUS
Judge

Entered: June 25, 1975
Book 19 page 537

I ask for this:

BOOTHE, PRICHARD & DUDLEY
4085 University Drive
Fairfax, Virginia 22030

By: /s/ Thomas C. Brown, Jr.
THOMAS C. BROWN, JR.
Counsel for Plaintiff

Seen and objected to:

OLD TOWN YACHT BASIN, INC.

By: /s/ [Illegible]

A Copy Teste:

ALVIN W. FRINKS
Clerk

By: /s/ Kathryn L. Stewart
Deputy Clerk

APPENDIX H

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

September Term, 1975

Civil Action #2211-73

No. 75-1440

[Filed Mar. 26, 1976, United States Court of Appeals for the District of Columbia, George A. Fisher, Clerk]

UNITED STATES OF AMERICA,
Appellant

v.

HERBERT BRYANT INCORPORATED, ET AL

ORDER

Upon consideration of the motion of appellee Old Town Yacht Basin, Inc., for injunction against the City of Alexandria also an appellee herein, and of the opposition thereto of the City of Alexandria, and of the other responses to the motion, and it appearing that the City of Alexandria has served formal notice on movant that it must vacate the disputed premises on or before March 31, 1976, and it further appearing that oral argument on this appeal on the merits will be held on April 8, 1976, it is

ORDERED by the Court that appellee, the City of Alexandria, be, and hereby is, enjoined from taking any action to remove appellee, Old Town Yacht Basin, Inc., from the

premises which it now occupies until further order of the Court on condition that appellee Old Town Yacht Basin, Inc., shall pay rent of $300.00 each month, when and as the same becomes due, to the City of Alexandria with the requirement that such funds be kept separate from other city funds until further order of this Court.

For the Court:

/s/ George A. Fisher
GEORGE A. FISHER
Clerk

[Received Mar. 29, 1976, City Attorney]

Supreme Court, U. S.
FILED
NOV 2 1976
MICHAEL RODAK, JR., CLERK

IN THE SUPREME COURT
of the United States

October Term, 1976

No. 76-465

CITY OF ALEXANDRIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF OLD TOWN YACHT BASIN, INC. IN OPPOSITION

ROBERT E. NAGLE
Lichtman, Abeles, Anker
& Nagle, P.C.
1730 M Street, N. W.
Washington, D. C. 20036

Counsel for Old Town Yacht
Basin, Inc.

INDEX

Opinion Below 1

Jurisdiction 2

Question Presented 2

Statement of the Case 2

Argument 8

Conclusion 14

CITATIONS

Cases:

American Houses v. Schneider,
211 F.2d 881 (3d Cir. 1954) 9

City Council of Greenville v. White,
194 Miss. 145, 11 So.2d 816 (1946)... 13

Dombrowski v. Pfister, 380 U.S.
479 (1965) 9

Ellis v. Sutton, 126 Miss. 102,
88 So. 519 (1921) 13

Matthews v. W.T. Freeman Co. 191
Va. 385, 60 S.E. 2d 909 (1950). 12

Toucey v. New York Life Ins. Co.,
314 U.S. 118 (1941) 10, 11

Voss V. King, 33 W.Va. 326, 10 S.E.
402 (1889) 12

Welder v. McComb, 10 Tex. Giv.
App. 85, 30 S.W. 822 (1895)..... 13

Statutes:

28 U.S. §2283.....8, 9, 10

IN THE SUPREME COURT
of the United States

October Term, 1976
No. 76-465

CITY OF ALEXANDRIA,

Petitioner,

v.

UNITED STATES OF AMERICA,

Respondent.

On Petition for a Writ of Certiorari
to the United States Court of Appeals
for the District of Columbia Circuit

BRIEF OF OLD TOWN YACHT BASIN, INC. IN OPPOSITION

OPINION BELOW

The Opinion of the Court of Appeals is not yet reported. It appears as Appendix A to the petition for certiorari. The Opinion of the District Court is reported at 386 F. Supp. 1287.

JURISDICTION

The judgment of the court below was entered on July 6, 1976. The petition for certiorari was filed on October 4, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

QUESTION PRESENTED

Whether the District Court has jurisdiction to maintain the status quo by enjoining the City of Alexandria from removing Old Town Yacht Basin, Inc. from premises whose ownership is the subject of this litigation.

STATEMENT OF THE CASE

This is a quiet title action filed by the United States on December 21, 1973 in the United States District Court for the District of Columbia, in order to establish the claim of the United States to ownership of certain lands lying easterly of the 1791 high water line of the Potomac River along the Alexandria, Virginia waterfront. Among

the parties against whom the action was brought were the City of Alexandria and Old Town Yacht Basin, Inc. (hereafter "Old Town"), both of which claim property rights within the area which is the subject of the litigation. On December 9, 1974, the District Court dismissed the action on the ground that it "lacks jurisdiction to hear and determine a quiet title action to any land situated within the territorial limits of Virginia." (386 F. Supp. at 1289).

While the appeal of the United States of this decision was pending, Old Town, for reasons described below, sought and obtained from the Court of Appeals an order enjoining any attempt by the City to remove Old Town from premises which it occupies and which are part of the area in dispute.

On July 6, 1976, the Court of Appeals reversed the District Court's decision and held that

under applicable legislation the Federal courts for the District of Columbia have exclusive jurisdiction to consider this action. In remanding, the Court of Appeals also vacated the order enjoining the City of Alexandria from taking action against Old Town, stating that the District Court would thereafter have jurisdiction to deal with that matter.

On October 4, 1976, a number of the defendants, including the City of Alexandria but not including Old Town, joined in a petition for certiorari seeking review of the decision of the Court of Appeals concerning the question of jurisdiction to hear the quiet title action. In addition, on that same date the City of Alexandria filed a separate petition for certiorari seeking review of the Court of Appeals' ruling that the District Court would have jurisdiction to enjoin the City from attempting to remove Old Town during the

pendency of this litigation. This response is directed to that separate petition.

This injunction issue arises from the fact that among the properties whose ownership is involved in this quiet title action are two parcels of land upon which Old Town has operated a marina since 1957. One parcel was purchased in fee by Old Town in 1957. The other parcel consists of land claimed by the City of Alexandria, which Old Town first occupied in 1956 under an assignment of a ten year lease which the City of Alexandria had issued at a rental of $1 per year.

Following the expiration of that lease Old Town remained in possession and continued to pay $1 per year until 1968 when the City of Alexandria demanded an increase to $300 per month. The increased amount was then paid until November 1971, after which further payments were withheld by Old Town based upon its conclusion

that the City did not have title to the property. This conclusion was confirmed in January 1973 when the United States advised Old Town that the United States was the fee owner of all lands occupied by Old Town. Shortly thereafter, the United States granted Old Town revocable authority to continue its occupancy of such lands for the purpose of operating a marina and related facilities.

Despite the claim of the United States to ownership of the premises in question, and the filing of its quiet title action in December 1973, the City of Alexandria initiated suit in February 1974 against Old Town in state court to collect its claim to back rent. Following the disposition of that litigation, and the City's rejection of Old Town's offer to make future payments of $300 per month into escrow, pending resolution of the questions of title in the instant case, the City in

February 1976, served notice that Old Town must vacate the disputed premises.

Upon receiving such notice Old Town moved the Court of Appeals for an order enjoining the City from taking action to compel such removal, pending the resolution of the title dispute. The motion was accompanied by an affidavit reciting the facts set forth herein (see Motion of Old Town Yacht Basin, Inc. for Injunction Against the City of Alexandria and attachments thereto, filed March 18, 1976).

The Court of Appeals thereafter issued such an order, which was conditioned upon Old Town's payment of $300 per month, such amounts to be kept by the City in an escrow account. Such condition has been complied with. As noted above, when the Court of Appeals issued its opinion reversing the District Court's decision on the question of jurisdiction over the quiet title action,

and remanded for trial, it vacated the injunction, stating that thereafter "the matter will be in the hands of the District Court." The matter has not yet been brought before the District Court.

ARGUMENT

The ruling by the Court of Appeals that the District Court has jurisdiction to maintain the status quo by enjoining the removal of Old Town pending the outcome of this litigation accords with settled legal principles and does not require review by this Court. Moreover, review by this Court would in any event be premature since no such action has yet been taken by the District Court.

1. In requesting review the City of Alexandria relies principally upon 28 U.S.C. §2283 which, it contends, prohibits a federal court from enjoining a state court proceeding. That provision states as follows:

> "A court of the United States may not grant an injunction to stay proceedings in a state court, except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction or to protect or effectuate its judgments."

It is established that "[t]his statute and its predecessors do not preclude injunctions against the institution of state court proceedings, but only bars stays of suits already instituted." Dombroski v. Pfister, 380 U.S. 479, 484, n.2 (1965), and authorities cited. Since the City has never instituted proceedings in state court to compel Old Town's removal from the premises in question, the foregoing statute accordingly has no application. While the City also claims that its notice to Old Town purporting to terminate the latter's tenancy became a state court proceeding within the meaning of 28 U.S.C. §2283, an almost identical claim was rejected in American Houses v. Schneider, 211 F.2d 881, 885 (3d Cir. 1954).

2. Even if the City had already begun an action in state court, the instant case would fall within one of the express exceptions to 28 U.S.C. §2283. Indeed, even before that statute was amended in 1948 to expressly include the stated exceptions, this Court had held that it "does not preclude the use of the injunction by a federal court to restrain state proceedings seeking to interfere with property in the custody of the court." Toucey v. New York Life Ins. Co., 314 U.S. 118, 135 (1941). The Court cited prior authorities holding "that the court, whether federal or state, which first takes possession of a res withdraws the property from the reach of the other," and concluded that the rule applicable to in rem proceedings is "that the court first acquiring jurisdiction shall proceed without interference from a court of the other jurisdiction . . ." (314 U.S. at 135).

Among the matters to be decided in the present litigation is whether the United States or the City of Alexandria has title to the property which is occupied by Old Town. The United States has authorized Old Town to continue its occupancy; the City, on the other hand, threatens to attempt to remove Old Town from such property. At issue, therefore, is the right to possession of a "res" which by virtue of the action filed by the United States, is already within the jurisdiction of the Federal Court, thereby "withdrawing the property from the reach of the [State Court]" (Toucey, supra, 314 U.S. at 135).

The City contends that Toucy has no application here since in any state court action between the City and Old Town the latter would be precluded from raising the issue who has title to the premises in question. Nevertheless, there is every prospect that state court litigation to remove Old

Town would involve the same issues of title as are now before the Federal court. While it is the general rule that a tenant is estopped to deny the title of his landlord, there are exceptions to that rule which are pertinent here. For example, it is established law in Virginia, as well as other jurisdictions, that "a tenant may dissever the relationship existing between himself and his landlord without first surrendering possess.on of the leased premises," provided there is "a clear, positive, and continued disclaimer and disavowal of the landlord's title," knowledge of which is brought home to the landlord. Matthews v. W. T. Freeman Co., 191 Va. 385, 396 60 S.E. 2d 909, 914 (1950). In such a case, the tenant may claim the fee in himself or in a third person. Voss v. King, 33 W. Va. 326, 10 S.E. 402, 405 (1889). It has also been held that the otherwise applicable rule precluding a tenant from disputing the land-

lord's title does not apply when title to the property, as in the instant case, is claimed to be in the United States. See City Council of Greenville v. White, 194 Miss. 145, 11 So. 2d 816, 818-19 (1946); Ellis v. Sutton, 126 Miss. 102, 88 So. 519, 521 (1921); Welder v. McComb, 10 Tex. Civ. App. 85, 30 S.W. 822, 825 (1895).

Thus, where, as here, Old Town has repeatedly made known to the City that it is in possession under the authority of the United States as the rightful owner of the premises, there is clear authority that it may assert this claim in state court litigation seeking Old Town's removal. Since that same issue is already before the Federal court it would be entirely appropriate for the latter to enjoin the City from initiating such state court litigation.

CONCLUSION

For the foregoing reasons, the petition of the City of Alexandria for a writ of certiorari should be denied.

Respectfully submitted,

Robert E. Nagle

Lichtman, Abeles, Anker
& Nagle, P.C.
1730 M Street, N. W.
Washington, D. C. 20036

Attorney for Old Town Yacht
Basin, Inc.

No. 76-476 AND No. 76-465

Supreme Court, U. S.
FILED
JAN 6 1977
MICHAEL RODAK, JR., CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1976

ROBINSON TERMINAL WAREHOUSE CORPORATION, ET AL.,
PETITIONERS

v.

UNITED STATES OF AMERICA

CITY OF ALEXANDRIA, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

ROBERT H. BORK,
Solicitor General,

PETER R. TAFT,
Assistant Attorney General,

JACQUES B. GELIN,
KATHRYN A. OBERLY,
Attorneys,
Department of Justice,
Washington, D.C. 20530.

INDEX

Page

Opinions below 1

Jurisdiction 2

Questions presented 2

Statutes involved 2

Statement 3

Argument 7

Conclusion 10

CITATIONS

Cases:

Cohens v. *Virginia*, 6 Wheat. 264 9

Marine Railway & Coal Co. v. *United States*, 257 U.S. 47 4

Morris v. *United States*, 174 U.S. 196 4

Palmore v. *United States*, 411 U.S. 389 8

Smoot Sand & Gravel Corp. v. *Washington Airport, Inc.*, 283 U.S. 348 4

Statutes and rules:

Act of April 27, 1912, 37 Stat. 93 ..... 2, 3, 4

Section 4 8

Act to retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, 9 Stat. 35 ..... 2, 3

Section 1 4

Page

Statutes and rules (Continued):

District of Columbia-Commonwealth of Virginia Boundary Act of October 31, 1945, 59 Stat. 552 ..... 2, 3, 4, 5

Section 103 ..... 3, 5, 6, 7, 8

Rule 54(b), Fed. R. C. P. 6

Miscellaneous:

H.R. Rep. No. 595, 79th Cong., 1st Sess. (1945) 5, 8

S. Rep. No. 598, 79th Cong., 1st Sess. (1945) 5

In the Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-476

ROBINSON TERMINAL WAREHOUSE CORPORATION, ET AL., PETITIONERS

v.

UNITED STATES OF AMERICA

No. 76-465

CITY OF ALEXANDRIA, PETITIONER

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITIONS FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

OPINIONS BELOW

The opinion of the court of appeals (Pet. Ex. A 1-20)[1] is reported at 543 F. 2d 299. The opinion of the district court (Pet. Ex. F) is reported at 386 F. Supp. 1287.

---

[1]Unless otherwise indicated, "Pet. Ex." references are to the exhibits appended to the petition in No. 76-476.

JURISDICTION

The judgment of the court of appeals was entered on July 6, 1976. The petition for a writ of certiorari in No. 76-465 was filed on October 1, 1976, and the petition for a writ of certiorari in No. 76-476 was filed on October 4, 1976. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTIONS PRESENTED

1. The question presented in No. 76-476 is whether Section 103 of the District of Columbia-Commonwealth of Virginia Boundary Act of October 31, 1945, 59 Stat. 552, expressly preserved the jurisdiction of the United States District Court for the District of Columbia to adjudicate a quiet title action instituted by the United States pursuant to the Act of April 27, 1912, 37 Stat. 93, to determine ownership of the land lying between the original District of Columbia-Virginia boundary (the 1791 high water mark on the Virginia side of the Potomac River) and the boundary line established by the 1945 Boundary Act.

2. The question presented in No. 76-465 is whether, in a landlord-tenant dispute between two of the defendants named by the United States in its quiet title action, the alleged landlord's challenge to the district court's jurisdiction to involve itself in the rent dispute is premature, where the district court has not been requested to take any action on the matter and in fact has not done so.

STATUTES INVOLVED

The relevant provisions of the Act to retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia, 9 Stat. 35; the Act of April

27, 1912, 37 Stat. 93; and the District of Columbia-Commonwealth of Virginia Boundary Act of October 31, 1945, 59 Stat. 552, are set forth as Pet. Exs. C, D and E.

STATEMENT

The United States initiated this action in the United States District Court for the District of Columbia, pursuant to the provisions of the Act of April 27, 1912, 37 Stat. 93 (the "1912 Act"), as affirmed by Section 103 of the Act of October 31, 1945, 59 Stat. 552 (the "1945 Act"),[2] to quiet title to submerged and fast lands which have been added to the Alexandria, Virginia, waterfront since January 24, 1791.

As the courts below recognized, this case, both in its present jurisdictional posture and in its substantive aspects regarding title, arose out of the longstanding conflict over the location of the boundary between the District of Columbia and the Commonwealth of Virginia following the 1846 congressional retrocession (9 Stat. 35) of the territory Virginia had ceded to the United States for the

---

[2]For simplicity we refer to the area involved as the Alexandria waterfront. It is specifically described in the United States' complaint as being in "Virginia or the District of Columbia bounded on the south by the north line of the United States Navy pier, as such line extends shoreward, such line being 176 feet 7 inches south of the south line of Gibbon Street and on the north by the south property line of parklands of the United States, such line being approximately 500 feet north of and parallel to the street known as Slater's Lane, and as said boundaries would extend into the River, and on the west by the January 24, 1791, high water mark of the Potomac River, as such lands extend into the River" (Pet. Ex. A 3).

creation of the District of Columbia.[3] The United States contended that, since the retrocession included only those lands which Virginia had ceded in 1791, the boundary between the District of Columbia and the Commonwealth of Virginia became the high water mark on the Virginia side of the Potomac River as of January 24, 1791. Any land, either submerged or fast, riverward of the 1791 high water mark remained in the District of Columbia, and in United States' ownership, since it was part of the Maryland cession to the United States (Pet. Ex. A 3). See, *e.g., Smoot Sand & Gravel Corp.* v. *Washington Airport, Inc.*, 283 U.S. 348, 350; *Marine Railway & Coal Co.* v. *United States*, 257 U.S. 47; *Morris* v. *United States*, 174 U.S. 196.

To clarify and protect the United States' interests in this area, among others, Congress, in 1912, directed the Attorney General of the United States to institute, when he deemed appropriate (37 Stat. 93)—

> * * * suits in the Supreme Court of the District of Columbia [to quiet title to] *any part or parcel of the land or water in the District of Columbia* in, under, and adjacent to the Potomac River * * *

[3]Section 1 of "An Act to retrocede the County of Alexandria, in the District of Columbia, to the State of Virginia," 9 Stat. 35, provides as follows:

> *Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled* [italicized in original], That, with the assent of the people of the county and town of Alexandria, to be ascertained as hereinafter prescribed, *all of that portion of the District of Columbia ceded to the United States by the State of Virginia, and all the rights and jurisdiction therewith ceded over the same, be, and the same are hereby, ceded and forever relinquished to the state of Virginia*, in full and absolute right and jurisdiction, as well of soil as of persons residing or to reside thereon. [Emphasis added.]

> *including the shores and submerged or partly submerged land*, as well as the beds of said waterways, and also the upland immediately adjacent thereto, *including made lands*, flats, and marsh lands. [Emphasis added.]

No general action to adjudicate title to the land lying within the Alexandria waterfront area, however, was initiated until the United States filed the instant action on December 21, 1973 (Pet. Ex. A 7).

In the interim period, the Alexandria waterfront was extended further and further into the Potomac River and jurisdictional uncertainties increasingly hampered law enforcement along the shoreline. To alleviate these jurisdictional uncertainties, Congress, at the urging of the Attorney General, enacted the Act of October 31, 1945, 59 Stat. 552, to "establish a definite clear-cut boundary line, easy to recognize and convenient for police and court jurisdiction" (H.R. Rep. No. 595, 79th Cong., 1st Sess. 1 (1945); S. Rep. No. 598, 79th Cong., 1st Sess. 1 (1945)). This statute established the new jurisdictional boundary along the Alexandria waterfront at the pierhead line, by ceding concurrent jurisdiction to the Commonwealth of Virginia over all lands situated between the pierhead line and the mean high water mark of 1791.

Section 103 of the 1945 Act, however, expressly provided as follows:

> Sec. 103. Nothing in this Act shall be construed as relinquishing any right, title, or interest of the United States to the lands lying between the mean high-water mark as it existed January 24, 1791, and the [pierhead line]; or to limit the right of the United States to establish its title to any of said lands as provided by Act of Congress of April 27, 1912 (37 Stat. 93); or the jurisdiction of the courts

> of the United States for the District of Columbia to hear and determine suits to establish the title of the United States in all lands in the bed, marshes and lowlands of the Potomac River, and other lands as described by said Act below the mean high-water mark of January 24, 1791 * * * .

The United States took the position, through this action, that this language expressly preserved the exclusive jurisdiction of the United States District Court for the District of Columbia to adjudicate title to the lands along the Alexandria waterfront. Petitioners, however, sought dismissal of the action on the ground that such an action could only be maintained in the United States District Court for the Eastern District of Virginia. The district court agreed with petitioners and, on January 29, 1975, dismissed the action against 30 of the 36 named defendants (Pet. Ex. A 3).[4]

On appeal, the court of appeals reversed, holding that Section 103 of the 1945 Act expressly preserved the jurisdiction of the United States District Court for the District of Columbia to adjudicate actions brought by the United States to quiet title to lands along the Alexandria waterfront (*ibid.*) Accordingly, the court remanded for a trial on the merits. Petitioners in No. 76-476 challenge this ruling.

---

[4]The district court dismissed those defendants claiming ownership of land shoreward of the pierhead line between Gibbon Street on the south and Second Street on the north in the City of Alexandria. The district court retained jurisdiction over the six defendants claiming ownership of parcels lying between Third Street and Slater's Lane since the court found a dispute about whether this land was in the District of Columbia or in the Commonwealth of Virginia. 386 F. Supp. 1287, 1290. The district court's order of dismissal included a certification under Rule 54(b), Fed. R. Civ. P., to permit immediate appellate review.

The City of Alexandria, petitioner in No. 76-465, raises a matter ancillary to the court of appeals' jurisdictional decision. During the pendency of this action, a rent dispute arose between the City and Old Town Yacht Basin, Inc., both of whom are defendants in the quiet title action. On Old Town's motion, and with the support of the United States, the court of appeals issued an injunction on March 26, 1976, prohibiting the City from taking any action to remove Old Town from the premises it now occupies, on condition that Old Town pay the City a monthly rental of $300.00, to be maintained by the City in a separate account (No. 76-465 Pet. Ex. H). The court of appeals' decision provided that this injunction would be vacated upon issuance of the mandate and the matter remanded to the district court along with the rest of the case (Pet. Ex. A). In its petition, the City challenges the remand of this landlord-tenant dispute to the district court (No. 76-465 Pet. 3).

ARGUMENT

The decision of the court of appeals is correct, the issues involved here are not of general importance, and there is no reason for review by this Court.

1. The language employed by Congress in Section 103 of the 1945 Act demonstrates a clear intention to preserve the jurisdiction of the United States District Court for the District of Columbia in actions to quiet title to lands lying riverward of the 1791 high water mark. Petitioners' contrary contention—that Section 103 merely preserved jurisdiction over actions involving lands to the District of Columbia side of the new pierhead—can be reconciled neither with the language of Section 103 nor the legislative history of the 1945 Act, which make clear that this statute was enacted only to create "a definite, clear-cut boundary line, easy to recognize and convenient for police and court jurisdiction, between the District of Columbia and the Commonwealth of Virginia"

and "establish[ ] definitely the Federal courts in which *all criminal offenses will be tried*" (emphasis added). H.R. Rep. No. 595, *supra*, 1-2. While the statute settled criminal court and police jurisdiction in this area, however, Congress in Section 103 specifically disclaimed any intent to affect either the United States' title to lands riverward of the 1791 mean high water mark or the jurisdiction of the United States District Court for the District of Columbia, in which court the Attorney General was directed to initiate quiet title actions by the 1912 Act.[5] Petitioners' interpretation, which renders Section 103 mere surplusage, was properly rejected by the court of appeals.[6]

2. Although petitioners argue that the decision of the court of appeals gives the district court authority over lands lying outside its jurisdiction, the jurisdiction of the lower federal courts is determined by Congress. *E.g., Palmore* v. *United States*, 411 U.S. 389, 401, and cases cited therein. While petitioners therefore may be correct that the United States District Court for the District of

---

[5]Significantly, Section 4 of the 1912 Act directs the United States District Court for the District of Columbia to determine the value of any valid right, title, or interest in the land or water area in dispute held by any adverse claimant. Once these tasks are completed, the United States District Court for the District of Columbia—not the Eastern District of Virginia—is to prepare and submit a report to Congress. Petitioners' arguments would thus vitiate what is essentially a congressional reference statute directed toward a particular court.

[6]The same district judge who dismissed the instant action agreed, in an earlier unreported memorandum opinion, that petitioners' argument violates this basic rule of statutory construction. *United States* v. *Robinson Terminal Warehouse, Inc.*, Civil No. 1903-73 (D. D.C.). As the court of appeals noted (Pet. Ex. A 19, n. 32), it is "difficult to reconcile" the correct statement of the law in *Robinson Terminal* with the same judge's complete *volte-face* in this action.

Columbia may not generally entertain *in rem* actions involving lands located outside of the District, that argument is beside the point when Congress has expressly given the court such jurisdiction.

Similarly, petitioners' charge that the district court's potential ancillary involvement in questions of Virginia landlord-tenant law will result in an "administrative nightmare" (Pet. 14), if accurate, is an argument more properly addressed to Congress than to this Court. As the court of appeals recognized (Pet. Ex. A 19-20), "federal tribunals are not free to pick and choose among the various functions assigned to them by Congress." See *Cohens* v. *Virginia*, 6 Wheat. 264, 404.

3. We take no position on the merits of the rent dispute between the City of Alexandria and Old Town Yacht Basin, Inc.[7] We believe, however, that the City's challenge to the district court's jurisdiction over the matter is premature. As noted, the court of appeals' injunction was vacated on July 28, 1976, when the madate was issued. "At that time the matter [was placed] in the hands of the District Court." Pet. Ex. A 19, n. 33. The court of appeals did not direct the district court to enter a similar injunction or in any other manner indicate the course of action to be followed by the district court on remand. To date, the district court has not taken *any* action on the rent dispute, nor has it been requested to do so by any party. We submit that the City's challenge to the district

---

[7]However, we note here, as we did in the courts below, that the resolution of that underlying title dispute will take some time. In our view, neither the City nor Old Town should be unfairly injured during the pendency of the litigation. For this reason we suggested that the court of appeals might properly exercise its equitable powers to preserve the status quo, by issuing an injunction against eviction conditioned upon the payment of rent by Old Town into an escrow account.

court's jurisdiction should first be presented to that court if and when Old Town Yacht Basin seeks relief. The present posture of the matter renders it inappropriate for review by this Court.

CONCLUSION

For the foregoing reasons, the petitions for writs of certiorari should be denied.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

PETER R. TAFT,
Assistant Attorney General.

JACQUES B. GELIN,
KATHRYN A. OBERLY,
Attorneys.
Department of Justice.

JANUARY 1977.

DOJ-1977-01

see

476

476